

Court rules airport overlay district not a violation of state law

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EAST WENATCHEE — Douglas County's 2007 decision to create an airport overlay district around Pangborn Memorial Airport did not violate state laws, the state Court of Appeals said Tuesday.

Judge J. Robin Hunt, who wrote the unpublished opinion, also awarded Douglas County and the city of East Wenatchee attorney fees for "having to defend against a frivolous appeal."

Britt Dudek and Bruce Baguley, who own property in the district, challenged Douglas County's decision, saying it impacted Dudek's orchard operation and Baguley's possible future plan for an orchard.

Dudek and Baguley filed a petition for review with the Eastern Washington Growth Management Hearings Board.

Dudek, a Douglas County planning commissioner, and Baguley said in their petition that the resolution eliminates their "currently permitted" uses. But the hearing board in December 2007 disagreed, saying Douglas County's new airport zone complied with the Growth Management Act.

Dudek and Baguley in January 2008 then filed a petition for review of the board's decision with Thurston County Superior Court.

According to the opinion, the Superior Court in September 2008 also affirmed the board's decision and dismissed the plaintiffs' petition.

Regarding the appeal, Hunt wrote that "they have also failed to provide enough specific facts to demonstrate harm, relying instead, on generalities."

Seattle attorney Jim Klauser, who represents Dudek and Baguley, disagrees that the appeal was "frivolous" or that it didn't include substantive arguments.

"This case is about the county adopting rules that inhibit uses on commercial agriculture lands," Klauser said. "We're disappointed and surprised that the court didn't address that question."

He said Dudek and Baguley haven't decided yet how they would like to proceed, but have 20 days to seek reconsideration.

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